

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

Notice is hereby given that the Council of the County of Kaua'i will hold a public hearing on Wednesday, May 18, 2016, at 1:30 p.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihu'e, on the following:

Bill No. 2628

A BILL FOR AN ORDINANCE TO AMEND CHAPTERS 18, 20, AND 23 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REVOCABLE PERMITS IN COUNTY DESIGNATED RIGHTS-OF-WAY

This Bill proposes to amend Chapters 18, 20, and 23, Kaua'i County Code 1987, as amended, relating to the process and responsibilities for permitting of vending activities on county-owned property.

The purpose of this Bill is to simplify and clarify the permitting process for vending in public rights-of-way; provide a process consistent with state law; encourage unique community events that promote economic development while protecting health, safety, and welfare; empower community groups to manage their own events; and be equitable islandwide.

All interested persons who wish to present their comments may do so at the public hearing. Written testimony prior to the hearing would be appreciated. Written testimony can be submitted to the Office of the County Clerk, Council Services Division by mail, facsimile, or via E-mail to counciltestimony@kauai.gov. Copies of the proposed Bill are available at the Office of the County Clerk, Council Services Division.

(The Council Committee or Council may amend this Bill at its subsequent meetings. Meeting notices are posted at least 6 days in advance at the County Clerk's Office and the public may also testify at any of these meetings.)

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the foregoing Bill No. 2628 was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on April 20, 2016, by the following vote:

AYES: Chock, Hooser, Kagawa, Kaneshiro, Kualii, Yukimura,	
Rapozo	TOTAL – 7,
NOES: None	TOTAL – 0,
EXCUSED & NOT VOTING: None	TOTAL – 0.

Lihu'e, Hawai'i
April 21, 2016

/s/ Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

NOTE: SPECIAL ACCOMMODATIONS AND SIGN LANGUAGE INTERPRETER AND INTERPRETERS FOR NON-ENGLISH SPEAKING PERSONS ARE AVAILABLE UPON REQUEST FIVE (5) DAYS PRIOR TO THE MEETING DATE, TO THE COUNTY CLERK, 4396 RICE STREET, SUITE 209, LIHU'E, KAUAI, HAWAII, 96766. TELEPHONE NO. (808) 241-4188. FACSIMILE NO. (808) 241-6349.

(One publication – The Garden Island – April 27, 2016)

**A BILL FOR AN ORDINANCE TO AMEND CHAPTERS 18, 20, AND 23
OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO
REVOCABLE PERMITS IN COUNTY DESIGNATED RIGHTS-OF-WAY**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose: The purpose of this Bill is to clarify the process and responsibilities for the permitting of vending on County-owned property. The Council finds that under certain circumstances, vending on public property can have a benefit to economic development of our County and can provide for the revitalization of historic towns.

The Council further finds that the process for regulating vending should be clarified to distinguish vending between properties under the jurisdiction of the Department of Parks and Recreation and properties under the jurisdiction of the Department of Public Works, such as County rights-of-way. The Council further finds that given Act 115 of the 2013 Legislature now provides a permitting process for the State Department of Transportation to allow vending on State highways, the County now has the ability to issue similar revocable permits for limited vending within County rights-of-way, subject to terms of use and mitigation conditions to limit the impact to other users of County properties.

SECTION 2. Chapter 18 of the Kauai County Code 1987, as amended, is hereby amended by adding a new Article 5 as follows:

“Article 5. Vending from County Rights-of-Way Prohibited

Sec. 18-5.1 Vending from County Rights-of-Way Prohibited.

(a) No person shall park or place a vehicle or structure wholly or partly on any County right-of-way for the purpose of selling the vehicle or structure or of selling therefrom or therein any article, service, or thing, thereby creating a hazardous condition or a public nuisance or in reckless disregard of the risk of creating a hazardous condition or public nuisance. The Department of Public Works may remove or require the immediate removal of the vehicle or structure from the right-of-way.

(b) The County Engineer, in the case of County rights-of-way, may, upon application in writing, approve a revocable permit pursuant to Chapter 20, Article 5 of this code, subject to any terms and mitigation conditions imposed by the County Engineer or his designee, authorizing the applicant to vend in the right-of-way. If the revocable permit application

includes temporary road closures, approval of the revocable permit by the Chief of Police is also required.

(c) For the purposes of this section, “right-of-way” means the entire width from property line to property line, including the berm, swale or shoulder of a roadway owned and/or under the jurisdiction of the County of Kaua‘i.

SECTION 3. Chapter 18, Article 1, Section 18-1.2 of the Kaua‘i County Code 1987, as amended, is hereby amended as follows:

“Sec. 18-1.2 Restricted Uses.

The County Council may, if it deems necessary for the purpose of preserving the public health, safety and welfare, restrict the following uses of any road, street and highway under its jurisdiction by prohibiting:

(a) Use of a loud speaker or sound amplifier for projection of sound from any vehicle.

(b) Use by a commercial vehicle or by specific types of vehicles or by vehicle weight, load or size.

(c) Use for commercial, business or other income motivated purpose for private gain or charitable [purposes.] purposes, unless a revocable permit is issued by the Finance Director and approved by the County Engineer pursuant to Chapter 20, Article 5 of this code.

(d) Use for processions or assemblages.”

SECTION 4. Chapter 20, Article 5, Section 20-5.2 of the Kaua‘i County Code 1987, as amended, is hereby amended as follows:

“Sec. 20-5.2 Exceptions to Bidding Requirement.

The Finance Director may grant revocable permits approved by the County Attorney as to form and legality, without calling for public bids, when:

(a) The intended use does not conflict with use for immediate public purposes; and

(b) There is no reasonable alternative other than the use of public property; and

(c) The proposed use does not create a nuisance or unreasonably affect public health or welfare; and

(d) There is no conflicting request for use of the particular public [property; and] property.

[(e) The revocable permit shall be limited to a month-to-month basis or less.]”

SECTION 5. Chapter 20, Article 5, Section 20-5.3 of the Kaua'i County Code 1987, as amended, is hereby amended as follows:

"Sec. 20-5.3 Rental.

(a) For use by nonprofit organizations or governmental agencies for public purposes, the rental shall be one dollar (\$1.00) per month. "Nonprofit organization" is defined to mean an association, corporation or other entity, organized and operated exclusively for religious, charitable, scientific, literary, cultural, educational, recreational or other nonprofit purposes, no part of the assets, income or earnings of which inures to the benefit of any individual or member thereof.

(b) For use by others, the rental shall be the fair market rental value as [jointly] established by the Finance Department [and the Department of Public Works], or at the option of the user, the rental shall be the fair market rental value as established by a disinterested appraiser paid for by the user and approved by the Finance Department.

(c) Improvements to be made by the user that will benefit the County after the permit expires may be considered in establishing the rent. However, improvements constructed shall be at the risk of the user and no damages or claims shall be payable to the user upon termination of the permit. The user shall execute an agreement with the County specifying the terms of the use of the property and any mitigation that may be required by any of the County's agencies. For properties under the jurisdiction of the Department of Public Works, the County Engineer shall also review and approve the revocable permit.

(d) When bidding is not required pursuant to Chapter 20-5.2, a rental fee shall not be assessed for properties designated as County public rights-of-way.

(e) Each application for a revocable permit pursuant to this part shall be assessed an application fee of one hundred dollars (\$100.00), unless the applicant is the County of Kaua'i.

(f) Revocable permits issued under this section shall not exceed a period of one year."

SECTION 6. Chapter 23, Article 3, Section 23-3.2 of the Kaua'i County Code 1987, as amended, is hereby amended as follows:

"Sec. 23-3.2 Definitions.

When used in this Article the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

"Concession" means the grant to a private individual, partnership or corporation of the privilege for a fee to conduct operations essentially retail in nature, involving the sale and/or rental of goods, services, wares, novelties or

any merchandise to consumers in or on land or structures owned or controlled by the [County of Kaua'i.] Department of Parks and Recreation.

"Concession stands" mean structures owned or controlled by the County of Kaua'i which uses are granted to private individuals, partnerships or corporations for a fee to conduct operations essentially retail in nature involving the sale and/or rental of goods, services, wares, novelties or any merchandise to consumers.

"Concessionaire" means a private individual, partnership or corporation that has been granted the privilege for a fee to conduct operations essentially retail in nature involving the sale and/or rental of goods, services, wares, novelties or any merchandise to consumers in or on land or structures owned or controlled by the [County of Kaua'i.] Department of Parks and Recreation.

"Peddler" means a person or persons in the business of traveling about carrying goods, wares, food, or merchandise for sale and/or rental to consumers, or any person traveling about selling, renting, or offering for sale, or rent, soliciting orders for or inviting attention to or promoting in any manner whatsoever, directly or indirectly, goods, wares, merchandise, foodstuffs, refreshments or other kinds of property or services, or to distribute commercial handbills, or carry on or conduct any commercial promotional scheme, advertising programs or similar activity, or any person or persons in business of delivering food, foodstuffs, or refreshments to consumers at a place other than the peddler's fixed place of business, or any person or persons in the business of traveling about to deliver food, foodstuffs, or refreshments to consumers, or any person or persons engaged in the business or service of providing sport or recreational activities or rental of equipment therefor for commercial gain on either a fee basis or a donation in lieu of a fee and activities associated therewith, including but not limited to loading and unloading of passengers, transporting passengers, parking, or traversing over and through County parks.

"Peddling" means the carrying on of business by a peddler."

SECTION 7. Chapter 23, Article 3, Section 23-3.5 of the Kaua'i County Code 1987, as amended, is hereby amended as follows:

"Sec. 23-3.5 Peddling Prohibition; Prima Facie Evidence.

(a) It shall be unlawful to violate any of the rules and regulations adopted pursuant to Sec. 23-3.3.

(b) It shall be unlawful to engage in peddling without a valid peddler's license in the peddler's possession, or to operate at a location not authorized thereby, or to transfer a peddler's license to another, or to alter or possess an altered peddler's license.

(c) Peddling shall be unlawful without a permit issued by the Director of Parks and Recreation within County parks, playgrounds, beaches,

and other facilities, or on or alongside roads, parking lots or other areas subject to [County jurisdiction and abutting thereto.] Department of Parks and Recreation jurisdiction.

(d) Peddling shall be unlawful without a permit issued by the Director of Parks and Recreation in any area subject to [County] Department of Parks and Recreation jurisdiction between the ocean and the abutting property line, including, but not limited to, parking lots and County parks on the island of Kaua'i.

(e) Prima Facie Evidence; Peddling. The presence of a peddler without a permit issued by the Director of Parks and Recreation in any areas described in either Subsection (c) or (d) of this Section, with the peddler's or his/her employer's goods, wares, novelties, merchandise, foodstuffs, refreshments or other property or services shall constitute prima facie evidence of peddling, in violation of said Subsection."

SECTION 8. If any provision of this Ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 9. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 10. This Ordinance shall take effect upon its approval.

Introduced by: /s/ ROSS KAGAWA
(By Request)

DATE OF INTRODUCTION:

April 20, 2016

Līhu'e, Kaua'i, Hawai'i

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